IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 18136 of 2006(H)

AA.87/1994 of APPELLATE AUTHORITY, KANNUR

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PETITIONERS:

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1. SANKARAN, AGED 40 YEARS,
   S/O. PACHIKKARAN RAMAN, ARAVATH HOUSE,
   PANAYAL VILLAGE, HOSDURG TALUK.

2. YESHODA, AGED 35 YEARS,
   D/O. PACHIKKARAN RAMAN, ARAVATH HOUSE,
   PANAYAL VILLAGE, HOSDURG TALUK.

BY ADV. SRI.T.K.VIPINDAS
SRI.K.V.SREE VINAYAKAN

RESPONDENTS:

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1. K.V. DAMODAR, S/O. K.V. KESHAVA THANTHRI
   ARAVATH DEVASWOM, P.O. PANAYAL,
   KASARAGOD DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY
   THE GOVERNMENT PLEADER, HIGH COURT OF KERALA.

R2 BY GOVT.PLEADER SRI.THOMAS JOHN AMBOOKAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.18136/06

APPENDIX

PETITIONERS' EXTS:

EXT.P1 – TRUE COPY OF I.A.269/97 IN A.A.87/94

EXT.P2 – TRUE COPY OF ORDER OF APPELLATE AUTHORITY (LR) KANNUR DATED 10.12.04.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.18136 OF 2006

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DATED THIS THE 3RD JULY, 2007

J U D G M E N T

Government Pleader takes notice on behalf of the 2nd respondent. The Writ Petition is no longer defective.

2. The party-respondent, though served with notice, has not entered appearance to resist the prayers in the Writ Petition filed by the legal heirs of the appellant before the Land Reforms Appellate Authority impugning Ext.P2. Ext.P2 is an order passed on an application for restoration of the appeal which had been dismissed for default.

3. Heard Sri.T.K.Vipindas, counsel for the petitioners. Gone through Ext.P2 order. May be, the Appellate Authority had reasons to be displeased with the lack of diligence demonstrated by the petitioners in the matter of pursuing the appeal. But, at the same time, the fact that the original appellant who was obviously conducting the litigation had died during the pendency of the restoration application should not have been missed by the appellate authority. After all, the policy of law is always to have adjudication of all causes on their merits and not by default.

4. Under these circumstances, I set aside Ext.P2 on condition

that the petitioners pay a sum of Rs.1000/- by way of costs to the High Court Legal Services Committee within three weeks from today. Upon payment as above, the order setting aside Ext.P2 will become operative and thereupon the Appellate Authority will restore the appeal as well as the delay petition and dispose them of, with notice to the respondents, in accordance with law. I make it clear that this Court has allowed the application for restoration only.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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